

[Submitting Counsel Identified on Signature Page]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION and
ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-02880-JSC

**OMNIBUS ADMINISTRATIVE MOTION
TO SEAL TRIAL EXHIBITS PURSUANT
TO COURT ORDER (ECF NO. 335)**

Dept.: Courtroom 8—19th Floor
Judge: Honorable Jacqueline S. Corley

Pursuant to Civil Local Rules 7-11 and 79-5(c) and the Court’s July 26, 2023 Order Re Motions to Seal and Motions for *In Camera* Review Regarding Trial Exhibits (ECF No. 335), Defendant Microsoft Corporation (“Microsoft”), Defendant Activision Blizzard, Inc. (“Activision”), and designating non-parties involved in this action (collectively, the “Designating Parties”) respectfully move this Court for an order to seal portions of certain trial exhibits which the Designating Parties have designated as confidential.

On July 26, 2023, the Court directed the Designating Parties to “jointly file an omnibus motion to seal pursuant to Civil Local Rule 79-5 within 21 days of the date of this Order” with respect to “any outstanding sealing requests or remaining issues for trial exhibits not addressed by the Court.” ECF No. 335, at 2. Accordingly, the Designating Parties have identified below highly confidential material found in certain trial exhibits, along with the specific bases for sealing required under Local Rule 79-5. The proposed sealing and *in camera* treatment reflect the Designating Parties’ good-faith efforts to narrowly seek sealing or *in camera* treatment of only that information which is competitively sensitive, the public disclosure of which would cause injury to the Designating Parties that cannot be avoided through any more restrictive alternative means:

I. EXHIBITS DESIGNATED BY ACTIVISION

Exhibit	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested	Location of Original Declaration in Support of Sealing	Basis for Sealing Request
PX2094	Opinion at 11	Activision	<i>In camera</i>	ECF No. 205 at 7	This exhibit contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
PX2133	6/28/23 Tr. (Kotick), at 754:17–18	Activision	Redacted	ECF No. 205 at 8	This exhibit contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, business partnerships, terms of existing confidential agreements, and revenue figures and projections, which could be used to injure Activision if made publicly available.

Exhibit	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested	Location of Original Declaration in Support of Sealing	Basis for Sealing Request
PX2138	Opinion at 47	Activision	<i>In camera</i>	ECF No. 205 at 9	This exhibit contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, revenue figures and projections, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.
PX2167	Opinion at 29	Activision	<i>In camera</i>	ECF No. 205 at 10	This exhibit contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, terms of existing confidential agreements, and internal presentations discussing business strategy, which could be used to injure Activision if made publicly available.

Exhibit	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested	Location of Original Declaration in Support of Sealing	Basis for Sealing Request
PX2421	6/28/23 Tr. (Kotick), at 771:3–4	Activision	Redacted	ECF No. 205 at 17	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, business partnerships, and terms of existing confidential agreements, which could be used to injure Activision if made publicly available.

1 **II. EXHIBITS DESIGNATED BY GOOGLE**

2 Exhibit No.	3 Location Admitted / Cited	4 Designating Party	5 <i>In Camera</i> Treatment Requested (Pages:Lines or Exhibit)	6 Basis for Sealing Request
7 PX8003	8 Plaintiff's Proposed Findings of Fact and Conclusions of Law at ECF No. 175; Statement Identifying Witnesses and Exhibits to be Used June 23, 2023 at ECF No. 193; Plaintiff's Final Findings of Fact and Conclusions of Law at Dkt. No. 309.	9 Google LLC	10 (¶2:10-11; ¶15:10)	11 <i>See</i> ECF No. 155. This section of the Declaration contains commercially-sensitive details regarding Google's financial investment in its Stadia business which, if disclosed, could reveal Google's forward-looking business strategies. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			17 (¶9; ¶21:5) ¶20:1-2;	18 <i>See</i> ECF No. 155. This section of the Declaration contains non-public and commercially-sensitive actual and forecasted user totals for Google's Stadia service that could give competitors insight into Google's forward-looking business strategies. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			28 (¶21:8)	<i>See</i> ECF No. 155. This

Exhibit No.	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested (Pages:Lines or Exhibit)	Basis for Sealing Request
				section of the Declaration contains the identities of Google's customers, which implicates confidentiality interests of third parties and, if disclosed, could harm Google's ability to contract with third parties on a confidential basis. The disclosure of the identities of Google's customers or partners would also allow Google's competitors to target those customers in an attempt to deprive Google of business. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
PX7063	Statement Identifying Witnesses and Exhibits to be Used June 23, 2023 at ECF No. 193.	Google LLC	(13:23-14:4)	<i>See</i> ECF No. 155. This section of the Transcript contains proprietary details regarding the technical structure of Google's cloud gaming service. This is highly confidential information that could allow competitors to replicate Google's services and harm Google's ability to compete in offering future services. Legitimate confidentiality and competitive interests warrant the sealing of

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				this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(19:21-20:16)	<i>See</i> ECF No. 155. This section of the Transcript contains details regarding how Google assessed whether Stadia was ready for public launch. This is highly confidential information that could give competitors insight into Google's forward-looking business practices. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(31:15-35:2)	<i>See</i> ECF No. 155. This section of the Transcript contains details regarding how Google distributed hardware and software bundles for Stadia. This is highly confidential information that could give competitors insight into Google's forward-looking business practices. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential

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				information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(41:16-42:10; 46:5-48:2)	<i>See</i> ECF No. 155. These sections of the Transcript contains details regarding internal discussions related to Stadia's business model. This is highly confidential information that could give competitors insight into Google's forward-looking business practices. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(43:11)	<i>See</i> ECF No. 155. This section of the Transcript contains an internal Google email address. The public does not have an interest in learning internal contact information for Google's employees, and thus, legitimate confidentiality interests warrant the sealing of this information.
			(56:24-57:2; 57:10-12)	<i>See</i> ECF No. 155. This section of the Transcript contains details regarding Google's

Exhibit No.	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested (Pages:Lines or Exhibit)	Basis for Sealing Request
				negotiations with a potential distributor of its Stadia mobile app. This is highly confidential information that could give competitors an advantage in negotiating against Google and insight into Google's forward-looking business practices. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(84:1-85:16; 87:15-88:21)	<i>See</i> ECF No. 155. This section of the Transcript contains commercially-sensitive details regarding Google's financial investment in its Stadia business which, if disclosed, could reveal Google's forward-looking business strategies. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
			(141:19-21; 142:6-21)	<i>See</i> ECF No. 155. This section of the Transcript

Exhibit No.	Location Admitted / Cited	Designating Party	<i>In Camera</i> Treatment Requested (Pages:Lines or Exhibit)	Basis for Sealing Request
				contains a third party's confidential information, the disclosure of which would implicate that party's interest and would harm Google's ability to partner with third parties on a confidential basis in the future. Legitimate confidentiality and competitive interests warrant the sealing of this highly confidential information, the disclosure of which would cause injury to Google that could not be avoided through any less restrictive alternative to sealing.
PX3058	Plaintiff's Final Findings of Fact and Conclusions of Law at Dkt. No. 309.	Google LLC	(email addresses)	<i>See</i> ECF No. 155. This email contains internal Google email addresses. The public does not have an interest in learning internal contact information for Google's employees, and thus, legitimate confidentiality interests warrant the sealing of this information.

1 **III. EXHIBITS DESIGNATED BY MICROSOFT**

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Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX0003	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. It further provides insights on Microsoft's engagement with the FTC for specific requests of information and documentary material, which are confidential, and which could be used to injure the designating parties if made publicly available.
PX0006	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or

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28 ¹ Legitimate private interests warrant sealing of the Designating Parties' information in this chart, and the unsealing of the information would result in injury to the Designating Parties that cannot be avoided through any less restrictive alternatives.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX0014	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, market share analyses, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available. This document is a confidential submission to a regulator.
PX0038	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, future business strategy, strategic evaluation of forward-looking opportunities, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1025	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, strategic evaluation of forward-looking opportunities, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1065	<i>In camera</i> treatment requested	Microsoft	Trial Day 2: 306:13; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1070	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1075	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, assessment of the competitive landscape, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1087	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, which could be used to injure the designating parties if made publicly available.
PX1102	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, internal financial/revenue information or projections, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1110	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1136	Proposed redactions submitted to Court	Microsoft	Trial Day 3; Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1145	<i>In camera</i> treatment requested	Microsoft	Trial Day 2: 299:16; Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1151	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 941:24	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
PX1154	Previously ruled <i>in camera</i> ; proposed redactions submitted to Court in light of	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to business partnerships and future business strategy which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
	public opinion cite			
PX1240	Previously ruled <i>in camera</i> ; proposed redactions submitted to Court in light of public opinion cite	Microsoft	Trial Day 5: 936:12; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, detailed metrics used for analysis of gaming business, investment decisions, future business strategy, market share analyses, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, which could be used to injure the designating parties if made publicly available.
PX1274	Proposed redactions submitted to Court	Microsoft	Trial Day 4: 833:12	This portion contains non-public and highly sensitive information including, but not limited to, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1275	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
PX1283	Proposed redactions submitted to Court in light of public	Microsoft	N/A (noticed only); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, which could be used to injure the

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
	opinion cite		cited in the Court's public opinion.	designating parties if made publicly available.
PX1324	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, which could be used to injure the designating parties if made publicly available.
PX1425	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1471	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1476	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1516	Previously <i>in camera</i> ; Proposed redactions submitted to Court in light of public opinion cite	Microsoft	N/A (noticed only); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, detailed metrics used for analysis of gaming business, investment decisions, future business strategy, market share analyses, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, which could be used to injure the designating parties if made publicly available.
PX1517	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, strategic evaluation of forward-looking opportunities, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1529	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1538	Proposed redactions submitted to Court in light of public opinion cite	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, potential business

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1571	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
PX1603	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and internal user data, which could be used to injure the designating parties if made publicly available.
PX1613	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
PX1624	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and future business strategy, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1747	<i>In camera</i> treatment requested	Microsoft	Trial Day 4: 829:19	This portion contains non-public and highly sensitive information including, but not limited to, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1763	Proposed redactions submitted to Court in light of public opinion cite	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, strategic evaluation of forward-looking opportunities, internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1777	Previously <i>in camera</i> ; Proposed redactions submitted to Court in light of public opinion cite	Microsoft	Trial Day 4: 845:23; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
PX1828	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, and internal

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX1877	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes and future business strategy, which could be used to injure the designating parties if made publicly available.
PX1889	<i>In camera</i> treatment requested	Microsoft	Trial Day 2: 285:11	This document contains non-public and highly sensitive information including, but not limited to strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available. This document was treated as highly confidential during the evidentiary hearing (<i>see</i> Tr. 519), but Microsoft's request for <i>in camera</i> treatment at Dkt. 225 was not specifically ruled on.
PX1897	<i>In camera</i> treatment requested	Microsoft	Trial Day 2: 331:11	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX1949	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
PX1950	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy, which could be used to injure the designating parties if made publicly available.
PX1951	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, strategic evaluation of forward-looking opportunities, internal user data, and potential business partnerships, which could be used to injure the designating parties if made publicly available.
PX1966	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 978:2	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, future business strategy, internal financial/revenue information or projections, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Microsoft previously sought <i>in camera</i>

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				treatment for this exhibit at ECF No. 261, and now seeks redactions in light of its use at the evidentiary hearing.
PX3109	Previously <i>in camera</i> ; Proposed redactions submitted to Court in light of public opinion cite	Microsoft	Trial Day 3: 34:4; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, terms of proposed confidential agreements, which could be used to injure Microsoft if made publicly available.
PX4005	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities, confidential terms of existing agreements, potential business partnerships/negotiations, and evaluation of a third-party partner, which could be used to injure the designating parties if made publicly available.
PX4028	<i>In camera</i> treatment requested	Microsoft	Trial Day 5: 929:17	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, future business strategy, and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX4029	<i>In camera</i> treatment requested	Microsoft	Trial Day 5: 929:17	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, and future business strategy, which could be used to injure the designating parties if made publicly available.
PX4066	Proposed redactions submitted to Court	Microsoft	Trial Day 4: 840:16	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, and future business strategy, which could be used to injure the designating parties if made publicly available.
PX4157	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to strategic evaluation of forward-looking opportunities, which could be used to injure Microsoft if made publicly available.
PX4267	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, which could be used to injure the designating parties if made publicly available.
PX4303	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, strategic evaluation of forward-looking opportunities, internal

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX4334	Proposed redactions submitted to Court	Microsoft	Trial Day 2: 232:2; Trial Day 5: 988:21	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, internal financial/revenue information or projections, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Microsoft previously sought <i>in camera</i> treatment for this exhibit at ECF No. 261, and now seeks redactions in light of its use at the evidentiary hearing.
PX4341	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 1003:14	This portion contains non-public and highly sensitive information including, but not limited to, confidential revenue figures and projections, which could be used to injure the designating parties if made publicly available. Microsoft previously sought <i>in camera</i> treatment for this exhibit at ECF No. 261, and now seeks redactions in light of its use at the evidentiary hearing.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
PX4344	Proposed redactions submitted to Court	Microsoft	Trial Day 2: 244:24; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, confidential revenue figures and projections, which could be used to injure the designating parties if made publicly available. Document was treated as redacted during the hearing (<i>see</i> ECF No. 199) but not specifically ruled on due to an error in the daily witness statement.
PX4351	Proposed redactions submitted to Court	Microsoft	Trial Day 1: 66:23	This portion contains non-public and highly sensitive information including, but not limited to, business partnerships, which could be used to injure the designating parties if made publicly available.
PX4430	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal financial/revenue information or projections and confidential terms of existing agreements, which could be used to injure the designating parties if made publicly available.
PX4505	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and assessment of the competitive landscape, which could be used to injure the designating parties

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				if made publicly available.
PX4629	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, assessment of the competitive landscape which could be used to injure the designating parties if made publicly available.
PX4647	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, assessment of the competitive landscape, and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX4673	<i>In camera</i> treatment requested	Microsoft	Dkt. 224 (Lee Decl.)	This portion contains non-public and highly sensitive information including, but not limited to, future business strategy and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
PX4695	Proposed redactions submitted to Court	Microsoft	Dkt. 224 (Lee Decl.)	This document contains non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, potential business partnerships/negotiations, presented under a non-disclosure agreement, which could be used to injure the designating parties

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				if made publicly available. This document was mistakenly described as a “webpage” on the FTC’s exhibit list, but it is not a public document. It is a confidential Xbox presentation.
PX5000	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 3: 653:3; Dkt. 327 (Preliminary Injunction Opinion)	This expert report contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Additionally, each of the expert reports in this matter contain confidential information submitted by numerous third parties who are not able to view the full reports to determine what of their information should be sealed. Accordingly, Microsoft requests that the Court grant continued <i>in camera</i> treatment to the expert reports.
PX7011	Previously <i>in camera</i> ; Proposed excerpt and redactions submitted to Court in	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court’s public opinion.	Portions of this investigative hearing transcript contain non-public and highly sensitive information, including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
	light of public opinion cites			forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX7014	Previously <i>in camera</i> ; Proposed excerpt and redactions submitted to Court in light of public opinion cites	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	Portions of this investigative hearing transcript contain non-public and highly sensitive information, including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.
PX7046	Previously <i>in camera</i> ; Proposed excerpt and redactions submitted to Court in light of public opinion cite	Microsoft	Dkt. 224 (Lee Decl.); Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	Portions of this deposition transcript contains non-public and highly sensitive information, including, but not limited to, internal decision-making processes, investment decisions, strategic evaluation of forward-looking opportunities, market share analyses, assessment of the competitive landscape, and internal discussions of business strategy, which could be used to injure Microsoft if made publicly available.
RX1080	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 929:17	This portion contains non-public and highly sensitive information including, but not limited to, revenue figures and projections, which could be used to injure the designating parties if made publicly available.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
RX1105	<i>In camera</i> treatment requested	Microsoft	Trial Day 5: 929:18	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, strategic evaluation of forward-looking opportunities, and assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available.
RX1120	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 1049:16	This portion contains non-public and highly sensitive information including, but not limited to, forward-looking opportunities and internal discussion of business strategy, which could be used to injure the designating parties if made publicly available.
RX1128	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 1049:16	This portion contains non-public and highly sensitive information including, but not limited to, revenue figures and projections, which could be used to injure the designating parties if made publicly available.
RX1133	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 1049:16	This portion contains non-public and highly sensitive information including, but not limited to, strategic evaluation of forward-looking opportunities and internal discussion of business strategy, which could be used to injure the designating parties if made publicly available.
RX1137	Previously <i>in camera</i> ; Proposed redactions submitted to Court in	Microsoft	Trial Day 5: 1040:1; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions	Proposed redacted portions contain non-public and highly sensitive information including, but not limited to, future business strategy, market share analyses, strategic evaluation of

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
	light of public opinion cite		cited in the Court's public opinion.	forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
RX1140	<i>In camera</i> treatment requested	Microsoft	Trial Day 5: 1049:17	This portion contains non-public and highly sensitive information including, but not limited to, investment decisions, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, and internal financial/revenue information or projections, which could be used to injure the designating parties if made publicly available.
RX1154	Proposed redactions submitted to Court	Microsoft	Trial Day 5: 1049:17	This document contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available.
RX1211	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 1: 178:14; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX1212	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 1: 172:23; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX1245	Continued <i>in camera</i> treatment requested	Microsoft	Dkt. 228 (Wright Stip.); Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX2170	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 2: 444:20; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the offer is public (and was cited in the Court's opinion), the offer itself remains highly confidential.
RX3024	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 1: 181:14; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX3025	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 1: 181:25; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX3027	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 1: 183:15; Dkt. 327 (Preliminary Injunction Opinion)	This portion contains non-public and highly sensitive information including, but not limited to confidential terms of existing

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				agreements, and potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Although the existence of the agreement is public (and was cited in the Court's opinion), the agreement itself remains highly confidential.
RX3166	Previously <i>in camera</i> ; Proposed redactions submitted to Court in light of public opinion cite	Microsoft	Trial Day 5: 1049:17; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, internal presentations discussing business strategy, which could be used to injure the designating if made publicly available.
RX5046	Proposed redactions submitted to Court	Microsoft	Trial Day 2: 437:22; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to sales data and trends, which could be used to injure Microsoft if made publicly available. This document was treated as redacted at the evidentiary hearing, but it was not specifically ruled on.
RX5054	Proposed redactions submitted to Court	Microsoft	Trial Day 3: 591:6; Dkt. 327 (Preliminary Injunction Opinion) Proposed redactions do not include the portions cited in the Court's public opinion.	This portion contains non-public and highly sensitive information including, but not limited to, market share analyses, assessment of the competitive landscape, which could be used to injure the designating parties if made publicly available. This document was treated as redacted at the evidentiary hearing, but it was not specifically ruled on.

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
RX5055	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 4: 821:16; Dkt. 327 (Preliminary Injunction Opinion)	This expert report contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Additionally, each of the expert reports in this matter contain confidential information submitted by numerous third parties who are not able to view the full reports to determine what of their information should be sealed. Accordingly, Microsoft requests that the Court grant continued <i>in camera</i> treatment to the expert reports.
RX5056	Continued <i>in camera</i> treatment requested	Microsoft	Trial Day 4: 915-12; Dkt. 327 (Preliminary Injunction Opinion)	This expert report contains non-public and highly sensitive information including, but not limited to, internal decision-making processes, investment decisions, future business strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape, internal financial/revenue information or projections, internal user data, confidential terms of existing

Exhibit	Portions to Be Filed Under Seal	Designating Party	Location Admitted/Cited	Basis for Sealing Request ¹
				agreements, potential business partnerships/negotiations, which could be used to injure the designating parties if made publicly available. Additionally, each of the expert reports in this matter contain confidential information submitted by numerous third parties who are not able to view the full reports to determine what of their information should be sealed. Accordingly, Microsoft requests that the Court grant continued <i>in camera</i> treatment to the expert reports.

ARGUMENT

A. Sealing the Trial Exhibits Is Warranted Under Ninth Circuit Precedent as They Contain Microsoft's Confidential Business Information

In the Ninth Circuit, “[p]arties seeking to seal judicial records relating to motions that are ‘more than tangentially related to the underlying cause of action,’ bear the burden of overcoming the presumption with ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.’” *Lenovo (United States) Inc. v. IPCom GmbH & Co., KG*, 2022 WL 2313948, at *1 (N.D. Cal. Jun. 28, 2022); *see also Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[T]he court must ‘conscientiously [] balance the competing interests’ of the public and the party who seeks to keep certain judicial records secret.”). Courts in this Circuit regularly find that sealing is warranted where the records or information that are sought to be sealed could be used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (same); *Velasco v. Chrysler Grp. LLC*, 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (stating that “district courts in this Circuit have sealed records containing ‘information about proprietary business operations, a company’s business mode or

1 agreements with clients,’ [and] ‘internal policies and strategies’”) (internal citations omitted).

2 “The Ninth Circuit has explained that ‘in general, compelling reasons sufficient to outweigh the
3 public’s interest in disclosure and justify sealing court records exist when such court files might have
4 become a vehicle for improper purposes, such as the use of records to . . . release trade secrets.’” *Velasco*,
5 2017 WL 445241, at *2 (quoting *Elec. Arts*, 298 F. App’x at 569); *see also Elec. Arts*, 298 F. App’x at
6 569 (“A ‘trade secret may consist of any formula, pattern, device or compilation of information which
7 is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors
8 who do not know or use it.’”) (citation omitted). A court has “broad latitude” to grant protective orders
9 to prevent disclosure of “many types of information, including, but not limited to, trade secrets or other
10 confidential research, development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen.*
11 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

12 In determining whether a document should be filed under seal, courts consider, among other
13 things, the measures taken to guard the information’s secrecy and the value of the information to the
14 business or its competitors. *E.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
15 1212 (9th Cir. 2002). Here, Microsoft seeks to seal narrowly tailored excerpts of the trial exhibits that
16 reference and reflect, among other things, confidential, proprietary information relating to Microsoft’s
17 internal decision-making processes, investment decisions, future business strategy, market share
18 analyses, strategic evaluation of forward-looking opportunities, assessment of the competitive landscape,
19 internal financial/revenue information or projections, internal user data, confidential terms of existing
20 agreements, and potential business partnerships/negotiations. The disclosure of this information could
21 be used to injure Microsoft if made publicly available.

22 **B. Sealing the Trial Exhibits Is Necessary to Protect Microsoft’s Confidential and**
23 **Proprietary Business Information**

24 Microsoft seeks to maintain under seal portions of the trial exhibits, as they contain Microsoft’s
25 non-public and highly sensitive information from documents obtained during the course of the FTC’s
26 investigation and during litigation discovery. Examples of such confidential information include, but
27 are not limited to, Microsoft’s internal decision-making processes, investment decisions, future business
28 strategy, market share analyses, strategic evaluation of forward-looking opportunities, assessment of the

1 competitive landscape, internal financial/revenue information or projections, internal user data,
2 confidential terms of existing agreements, and potential business partnerships/negotiations. Disclosure
3 of this information would provide Microsoft's competitors with private data about Microsoft's
4 performance and business strategy, which could harm Microsoft's competitive standing. *See Cont'l*
5 *Auto. Sys. v. Avanci, LLC*, 2019 WL 6612012, at *4 (N.D. Cal. Dec. 5, 2019). Thus, the unsealing of
6 this highly confidential and sensitive information would cause injury to Microsoft that cannot be avoided
7 through less restrictive alternatives.

8 Finally, Microsoft provided the FTC with the confidential business information cited in the trial
9 exhibits pursuant to the statutory and regulatory guarantees of confidentiality contained in the Hart-
10 Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c); 6 C.F.R. § 4.10(d)-
11 (g). In similar cases, the FTC has acknowledged the need to maintain the confidentiality of a party's
12 confidential business information that has been provided to the FTC via a regulatory request. *See, e.g.,*
13 *FTC v. Lockheed Martin Corp.*, 2022 WL 1446650, at *2 (D.D.C. Jan. 25, 2022) ("According to the
14 FTC, sealing the complaint is appropriate . . . because the filing includes confidential information
15 submitted . . . pursuant to 'statutory and regulatory guarantees of confidentiality.' . . . The requested
16 sealing covers only confidential information and is, according to the FTC, required by regulation.").

17 C. Conclusion

18 As stated above, compelling reasons justify Microsoft's requests to seal the confidential business
19 information contained in the trial exhibits. Microsoft respectfully requests that this Court grant the
20 Omnibus Motion to Seal the confidential portions of the trial exhibits as identified herein.
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IV. EXHIBITS DESIGNATED BY NOA

Nintendo of America Inc. (“NOA”) respectfully requests to keep sealed the designated portions of the exhibits as described below.²

Exhibit No.	Portion of Document Sought to be Sealed	Reasons for Sealing
PX3218	Entire document.	This exhibit is a sensitive and confidential email that is a continuation of the email thread contained in RX2106, which was addressed in NOA’s previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) filed on June 21, 2023. Thus, the factual basis for the confidentiality of PX3218, and the harm that would occur if it is not kept under seal, is discussed in that Declaration at paragraph 9. In sum, Nintendo often engages with content publishers/providers, including Microsoft and Activision, to discuss and negotiate business deals. These discussions are confidential and sensitive, and often take place between senior executives. Disclosing these discussions would allow competitors to leverage confidential negotiation points in future negotiations with Nintendo that would adversely affect Nintendo’s negotiation position.
PX3225	Attachment to email. <ul style="list-style-type: none"> PX3225-002 to PX3225-005. 	This email contains a draft agreement between Nintendo and Microsoft, including proposed edits and redlines. Such information is highly confidential as it reveals the negotiation process for a contractual agreement. Public disclosure would result in competitive harm to Nintendo as competitors would undoubtedly use such information in potential future negotiations with Nintendo.
PX3233	Attachment to email. <ul style="list-style-type: none"> PX3233-002 to PX3233-005. 	This email contains a draft agreement between Nintendo and Microsoft, including proposed edits and redlines. Such information is highly confidential as it reveals the negotiation process for a contractual agreement. Public disclosure would result in competitive harm to Nintendo as competitors would undoubtedly use such information in potential future negotiations with Nintendo.

² The Court cited three (3) excerpts from NOA exhibits in the Preliminary Injunction Opinion (Dkt. No. 327): PX7059 (19:24-20:1), PX7065 (224:14-225:20), and PX8002 (¶ 2). As to these excerpts, NOA does not seek sealing. NOA understands that the remaining portions of PX7059, PX7065, and PX8002 remain under seal as they are not part of the record in this action. (Dkt. No. 335, at 2). Separately, NOA understands the Court instructed the parties and non-parties to address any exhibits that were admitted as evidence during the preliminary injunction evidentiary hearings. Based on discussions with the parties, it is NOA’s understanding that only the NOA exhibits listed in the above table were admitted during the preliminary injunction hearings.

Exhibit No.	Portion of Document Sought to be Sealed	Reasons for Sealing
PX3234	Entire document.	<p>This exhibit is a sensitive and confidential email that is a continuation of the email thread contained in PX3219, which was addressed in NOA's previous Local Rule 79-5 Statement (Dkt. No. 168) and corresponding Declaration (Dkt. No. 168-2) filed on June 21, 2023. Thus, the factual basis for the confidentiality of PX3234, and the harm that would occur if it is not kept under seal, is discussed in that Declaration at paragraph 9. In sum, Nintendo often engages with content publishers/providers, including Microsoft and Activision, to discuss and negotiate business deals. These discussions are confidential and sensitive, and often take place between senior executives. Disclosing these discussions would allow competitors to leverage confidential negotiation points in future negotiations with Nintendo that would adversely affect Nintendo's negotiation position.</p>
All NOA Exhibits	All NOA email addresses.	<p>All of NOA's exhibits referenced above contain internal Nintendo email addresses. There is no public interest in such information and therefore no legitimate need for it to be publicly disclosed.</p>

V. **EXHIBITS DESIGNATED BY SIE**

A. **INTRODUCTION**

Non-Party Sony Interactive Entertainment LLC (“SIE”) produced certain confidential business material in response to a civil investigative demand and subpoenas in the underlying FTC administrative proceeding, *In re Microsoft/Activision Blizzard*, No. 9412 (F.T.C.) (“FTC Action”). See ECF 112-2. This confidential SIE information has subsequently been used by Microsoft Corp. (“Microsoft”) and Activision Blizzard, Inc. (“Activision” and, together with Microsoft, “Defendants”) and the Federal Trade Commission (“FTC”) (collectively, the “Parties”) in exhibits at the preliminary injunction hearing, and it was incorporated into the Court’s Preliminary Injunction Opinion (ECF 327) (the “Opinion”). SIE previously filed statements in support of sealing these hearing exhibits and requested *in camera* treatment. See ECF 172, 227, 237, 271.

On July 26, 2023, the Court issued an Order re Motions to Seal and Motions for *In Camera* Review Regarding Trial Exhibits (ECF 335) (the “Order”), which terminates the pending motions to seal and for *in camera* treatment and requires the designating parties to submit a joint omnibus motion addressing any remaining requests to seal the trial exhibits that have not yet been addressed by the Court. See Order at 2. Pursuant to this Order and Civil Local Rule 79-5(c), SIE lists below the remaining requests to seal exhibits containing SIE’s confidential information.

The information that SIE seeks to maintain under seal contains competitively sensitive non-public information that would injure SIE if made publicly available. The table below describes the SIE highly confidential material found in parties’ exhibits and the specific bases supporting sealing of the information. See Civ. L.R. 79-5(c). These sealing requests reflect SIE’s good faith effort to seek the sealing only of information that is confidential, commercially or competitively-sensitive, and cannot be protected from public disclosure through less restrictive means.

Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
RX0020	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE’s approach to contract	Prior sealing request: ECF No. 172

Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
		negotiations with third party partners and discussions of particular contract terms with particular partners	
RX0070	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, or innovation plans, SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners, as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	Prior sealing request: ECF No. 237 SIE understands that the Court previously approved the sealing and redactions of the documents listed in the Parties' June 23 witness and exhibit lists (ECF Nos. 192, 193), including RX0020. <i>See</i> June 23, 2023 Hr'g Tr. at 219:4-10. SIE includes RX0020 here out of an abundance of caution and in case it misunderstood the Court's statement.
RX0075	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, or innovation plans as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	Prior sealing request: ECF No. 172
RX2069	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, or innovation plans as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	Prior sealing requests: ECF Nos. 172, 271 SIE understands that the Court previously approved SIE's requested redactions by permitting use of a redacted version of RX2069 at the preliminary injunction hearing. <i>See</i> June 27, 2023 Hr'g Tr. at 532:12-15. SIE includes RX2069 here out of an abundance of caution and in case it misunderstood the Court's intent.
RX2098	Redacted	This exhibit contains non-	Prior sealing requests: ECF Nos.

Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
	version provided to Court	public and highly sensitive information about SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	172, 271 SIE understands that the Court previously approved SIE's requested redactions by permitting use of a redacted version of RX2098 at the preliminary injunction hearing. <i>See</i> June 27, 2023 Hr'g Tr. at 602:19-603:15. SIE includes RX2098 here out of an abundance of caution and in case it misunderstood the Court's intent.
RX2163	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, or innovation plans as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	Prior sealing request: ECF No. 172 SIE understands that the Court previously approved the sealing and redactions of the documents listed in the Parties' June 23 witness and exhibit lists (ECF Nos. 192, 193), including RX2163. <i>See</i> June 23, 2023 Hr'g Tr. at 219:4-10. SIE includes RX2163 here out of an abundance of caution and in case it misunderstood the Court's statement.
PX3080	Entire exhibit	This exhibit contains non-public and highly sensitive information about SIE's business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, or innovation plans as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	Prior sealing request: ECF No. 172
RX5000	Redacted version provided to Court	This exhibit contains non-public and highly sensitive information about SIE data, analysis, and survey results relating to SIE product strategy and platform users' behavior on SIE's platform, including user engagement, gameplay, spend, likelihood of switching, or potential	Prior sealing request: ECF No. 172 SIE does not believe this document was actually admitted by the Court. <i>See</i> June 27, 2023 Hr'g Tr. 496:5-500:1. After a dispute arose as to the nature and admissibility of the document, SIE told Counsel for Microsoft that it

Exhibit	Information Requested to Be Maintained Under Seal	Description of Confidential Information Requiring Sealing	Notes to the Court
		competitive impacts of Microsoft's proposed acquisition of Activision, SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners, the nature and scope of SIE's technical collaboration with particular publishers, as well as SIE business analysis regarding competitors' and commercial partners' behavior and products	<p>would be prepared to address the document with the Court if Microsoft renewed its request for admission, which Microsoft never did. (Had Microsoft raised the issue, SIE would have confirmed that its investigation revealed that Microsoft's description of the nature of the document was mistaken.) Given that the document was never admitted, only "linked" to the designations from a deposition transcript where it was never introduced, Microsoft's inclusion of RX5000 as a Ryan deposition exhibit is inappropriate. SIE does not believe it is properly before this Court for issues of confidentiality. <i>See</i> ECF 335 at 2 (directing that motions to seal unadmitted exhibits are "moot as any such exhibits are not part of the record in this action").</p> <p>SIE has nonetheless included the exhibit in this motion and offered proposed redactions in an abundance of caution.</p>

B. THERE ARE COMPELLING REASONS TO SEAL SIE'S CONFIDENTIAL BUSINESS INFORMATION

Although the public enjoys a general right to inspect and copy public records, including judicial records, "access to judicial records is not absolute." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The presumption in favor of access to judicial records may be overcome by "compelling reasons" that justify sealing them, such as the need to prevent court filings from serving as "sources of business information that might harm a litigant's competitive standing." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978)). Courts have broad discretion to prevent disclosure of "many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211

(9th Cir. 2002). Specifically, if revealing “confidential business material, marketing strategies, [and] product development plans could result in improper use by business competitors seeking to replicate [the company’s] business practices and circumvent the time and resources necessary in developing their own practices and strategies,” a court may seal the materials in question. *Roley v. Google LLC*, No. 18-cv-07537-BLF, 2020 WL 13517498, at *1 (N.D. Cal. Apr. 28, 2020) (quoting *Algarin v. Maybelline, LLC*, No. 12CV3000 AJB DHB, 2014 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014)).

Non-parties receive special deference when these issues are considered. *See, e.g., United States v. Bazaarvoice, Inc.*, No. 13-cv-00133-WHO, 2014 WL 11297188, at *1 (N.D. Cal. Jan. 21, 2014) (granting motion to seal third-party trial exhibits, noting that disclosure would “chill investigations in the future where third party documents are essential”).

Here, Non-Party SIE seeks sealing of limited non-public information containing SIE’s highly confidential analyses and business strategy information related to its consoles, subscription services, and cloud gaming businesses. *See* Ex. SIE-1 (Decl. of C. Svensson).³ In particular, the information that SIE seeks to protect includes:

- Non-public SIE data, analysis, and survey results relating to SIE product strategy and platform users’ behavior on SIE’s platform, including user engagement, gameplay, spend, likelihood of switching, or potential competitive impacts of Microsoft’s proposed acquisition of Activision;
- Non-public information about SIE’s approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners;
- Non-public information on the nature and scope of SIE’s technical collaboration with particular publishers;
- Non-public information about SIE’s business strategies, competitive business plans, future investment plans, console and product development plans, product roadmaps, innovation plans; and
- Non-public SIE business analysis regarding competitors’ and commercial partners’ behavior

³ The Declaration of Christian Svensson was submitted at ECF 172-1 in conjunction with Non-Party SIE’s Administrative Motion for Sealing and In Camera Treatment (ECF 172). The competitively sensitive issues in today’s request are the same as those addressed in the previous Declaration, as explained in the chart above, and Mr. Svensson’s Declaration is resubmitted here as Exhibit SIE-1.

1 and products. *See id.* ¶ 3.

2 SIE uses this information to operate its business and shape its future strategy. As explained in
 3 Mr. Svensson’s declaration, if these business secrets were made available to the public, SIE’s
 4 competitors could use these secrets to inform their own strategies to gain an unfair advantage in
 5 competing with SIE. *See id.* ¶¶ 4-8. Business partners could likewise gain an unfair advantage in their
 6 relationships with SIE by understanding SIE’s strategic objectives, negotiation tactics, and relationships
 7 with other business partners. *See id.* These concerns are particularly severe here, as the information is
 8 current, which makes it more valuable to others because it is actionable. *See id.* ¶ 8.

9 In short, the information should be sealed because disclosure would undermine SIE’s business
 10 and give competitors and business partners an unfair advantage. *See Ex. SIE-1 (Decl. of C. Svensson);*
 11 *see also Synchronoss Techs., Inc. v. Dropbox Inc.*, No. 16-cv-00119-HSG, 2018 WL 6002319, at *1
 12 (N.D. Cal. Nov. 15, 2018) (noting that courts have sealed confidential business information when it
 13 “prevent[ed] competitors from gaining insight into the parties’ business model and strategy”) (citation
 14 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500-WQH-BGS, 2012 WL 1899838, at *2 (S.D. Cal.
 15 May 24, 2012) (concluding that “public disclosure of Nike’s confidential business materials . . . could
 16 result in improper use by business competitors seeking to replicate Nike’s business practices and
 17 circumvent the considerable time and resources necessary in product and marketing development”).

18 **C. THE COMPELLING REASONS TO SEAL OUTWEIGH ANY PUBLIC**
 19 **INTEREST IN THE REDACTED MATERIAL**

20 SIE’s request for sealing is the result of its good faith effort to seek the sealing only of information
 21 that is confidential, commercially or competitively-sensitive, and cannot be protected from public
 22 disclosure through less restrictive means. Any public interest in disclosing this information is
 23 outweighed by the prejudice that will result to SIE, a non-party, if no protection is granted. *See*
 24 *Bazaarvoice, Inc.*, 2014 WL 11297188, at *1 (noting importance of protecting third parties).

25 **D. CONCLUSION**

26 For the foregoing reasons, SIE respectfully requests that the Court grant SIE’s Administrative
 27 Motion to File Under Seal Certain Confidential Business Material and maintain under seal SIE’s
 28 confidential information listed in the chart above.

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1 Dated: August 16, 2023

Respectfully submitted,

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